

ESTTA Tracking number: **ESTTA37541**

Filing date: **07/01/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	ACM Enterprises, Inc.		
Entity	Corporation	Citizenship	CALIFORNIA
Address	1981 New York Drive Altadena, CA 91001 UNITED STATES		

Attorney information	Michelle Katz 4205 Kester Ave. Sherman Oaks, CA 94103 UNITED STATES michelle@mkatzlaw.com Phone:8187839729
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Registration Subject to Cancellation

Registration No	2932593	Registration date	03/15/2005
Registrant	Martello, Jeannette 501 Floral Park Terrace South Pasadena, CA 91030 UNITED STATES		
Goods/Services Subject to Cancellation	Class 044. First Use: 20020420, First Use In Commerce: 20040228 Goods/Services: medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services		

Attachments	2005-07-01 Petition to Cancel Skin Deep 2932593 w-attachs.pdf (21 pages)
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Signature	/michellekatz/
Name	Michelle Katz
Date	07/01/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Reg. No. 2932593)
Reg. Date: March 15, 2005)
Serial No. 76581387)
Filing Date: March 15, 2004)
Mark: SKIN DEEP)
_____)

PETITION TO CANCEL

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Madam/Sir:

1. Petitioner, ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, a California corporation located and doing business at 1981 New York Drive, Altadena, CA 91001, believes that it is or will be damaged by U.S. Registration No. 2932593 for “Skin Deep” for Class 044 and hereby petitions to cancel this Registration.

2. Description of Respondent’s Registration: Respondent filed U.S. Trademark Application No. 76581387 on March 15, 2004, for the mark “SKIN DEEP” in class 044 for medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services and claimed first use in commerce on Feb. 28, 2004 and first use anywhere on April 20, 2002. This mark was registered on the Principal Register on March 15, 2005. (See Exhibit 1.)

3. Respondent’s Attorney of Record and correspondence information is Brandon Tesser, Esq., Tesser & Ruttenberg, 12100 Wilshire Blvd., Suite 220, Los Angeles, CA 90025;

Respondent's Owner of Record is Jeannette Martello, 501 Floral Park Terrace, South Pasadena, CA 91030.

4. Standing: Petitioner has been and is now, using the mark "SKIN DEEP LASER MED SPA" in connection with the sale of services: providing cosmetic medical treatments namely laser hair removal, wrinkle correction therapies, removal of birthmarks, spider veins, tattoos, hand and facial skin rejuvenation, acne treatments all supervised by licensed medical staff since Sept. 1, 2003 in California and since Jan. 16, 2004 in interstate commerce. This use has been valid and continuous since the date of first use and has not been abandoned.

5. Petitioner has filed for U.S. Trademark Application No. 78569772 on Feb. 17, 2005 for "SKIN DEEP LASER MED SPA" for International Class 044 for the services ("providing cosmetic medical treatments namely laser hair removal, wrinkle correction therapies, removal of birthmarks, spider veins, tattoos, hand and facial skin rejuvenation, acne treatments all supervised by licensed medical staff."). (See Exhibit 2). This mark (SKIN DEEP LASER MED SPA) of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that respondent's registered mark so resembles Petitioner's mark (SKIN DEEP LASER MED SPA) previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

6. Count One: Allegation of Non-Use in Commerce. As grounds of this Petition, it is alleged: Respondent filed the following related trademark applications: In U.S. Serial No. 76581387 for “Skin Deep,” the Respondent submitted a specimen of use: a Feb. 18, 2004 Sales Receipt to the U.S. Patent and Trademark Office on March 15, 2004 for medical and health spa services. (See Exhibits 1, 3).

7. In U.S. Serial No. 76579565 for “Skin Deep Laser MEDSPA,” the Respondent submitted three specimens of use: two Sales Receipts dated Feb. 28, 2004 and one Sales Receipt dated Feb. 29, 2004 to the U.S. Patent and Trademark Office on March 4, 2004 for medical and health spa services. This application is currently abandoned (as of July 1, 2005). (See Exhibits 4-7).

8. In U.S. Serial No. 76581391 for “Skin Deep Laser,” the Respondent submitted a specimen of use: a Feb. 28, 2004 Sales Receipt to the U.S. Patent and Trademark Office on March 15, 2004 for medical and health spa services. (See Exhibits 8-9).

9. On this information and belief, Petitioner alleges that Respondent did not use the mark “Skin Deep” in commerce as listed on its trademark application (Serial No. 76581387) because Respondent alleges using three separate marks (“Skin Deep,” “Skin Deep Laser” and “Skin Deep Laser Medspa”) within a same time period (February 2004) for the same medical and health spa services.

10. Count Two: Lack of Use as a Mark Prior to Application or Registration. On information and belief, Petitioner alleges Respondent did not use the mark “Skin Deep” prior to Application or Registration. Looking at all three of the above mentioned Respondent applications, Respondent submitted sales receipts for medical and health spa services within the same time period (Feb. 2004) for the same services (medical and health spa services); Petitioner alleges that Respondent cannot have used all three marks for the same services prior to application or registration. (See Exhibits 1, 3-9).

11. Count Three: Fraud. On information and belief, Petitioner alleges Respondent’s registration for “Skin Deep” was obtained fraudulently in that the Respondent failed to use the mark in commerce as applied in the following applications. Said statement was made by an authorized agent of respondent (Jeannette Martello) with the knowledge and belief that said statement was false. (See Exhibits 1, 3-9).

12. Said false statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant said registration to respondent.

13. Petitioner was damaged by Respondent’s alleged false statements and the registration issued. Petitioner has continuously used the mark (Skin Deep Laser Med Spa) since Sept. 1, 2003 anywhere and since Jan. 16, 2004 in interstate commerce, and Petitioner’s continued and legal use of said mark will be impaired by the continued registration of

said mark of respondent. As a result, Petitioner respectfully requests that the Commissioner grant this Petition and cancel Registration No. 2932593.

Respectfully Submitted,

Michelle Katz, Esq.
Attorney for Petitioner, ACM, Inc.

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-07-01 16:40:17 ET

Serial Number: 76581387

Registration Number: 2932593

Mark

"Skin Deep"

(words only): "SKIN DEEP"

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2005-03-15

Filing Date: 2004-03-15

Transformed into a National Application: No

Registration Date: 2005-03-15

Register: Principal

Law Office Assigned: LAW OFFICE 114

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-03-15

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Martello, Jeannette

Address:

Martello, Jeannette
501 Floral Park Terrace
South Pasadena, CA 91030
United States

Legal Entity Type: Individual

Country of Citizenship: United States

Phone Number: (626) 403-1747

Petition to Cancel, Reg. 2932593
EXHIBIT 1

Fax Number: (626) 403-1784

GOODS AND/OR SERVICES

International Class: 044

medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services

First Use Date: 2002-04-20

First Use in Commerce Date: 2004-02-28

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-03-15 - Registered - Principal Register

2005-02-02 - PAPER RECEIVED

2004-12-21 - Published for opposition

2004-12-01 - Notice of publication

2004-10-13 - Law Office Publication Review Completed

2004-10-04 - Assigned To LIE

2004-09-30 - Approved for Pub - Principal Register (Initial exam)

2004-09-30 - Examiners amendment e-mailed

2004-09-30 - Examiners Amendment -Written

2004-09-26 - Case file assigned to examining attorney

2004-03-31 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent

Petition to Cancel, Reg. 2932593
EXHIBIT 1

JEANNETTE MARTELLO
501 FLORAL PARK TERRACE
SOUTH PASADENA CA 91030

Phone Number: (626) 403-1747

Fax Number: (626) 403-1784

Petition to Cancel, Reg. 2932593
EXHIBIT 1

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-07-01 16:41:52 ET

Serial Number: 78569772

Registration Number: (NOT AVAILABLE)

Mark

**SKIN DEEP LASER
MED SPA**

(words only): SKIN DEEP LASER MED SPA

Standard Character claim: Yes

Current Status: Newly filed application, not yet assigned to an examining attorney.

Date of Status: 2005-03-03

Filing Date: 2005-02-17

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: L3D -TMEG Law Office 103 - Docket Clerk

Date In Location: 2005-03-16

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. ACM Enterprises, Inc DBA Skin Deep Laser Med Spa

Address:

ACM Enterprises, Inc DBA Skin Deep Laser Med Spa
1981 New York Drive

Petition to Cancel, Reg. 2932593
EXHIBIT 2

Altadena, CA 91001

United States

Legal Entity Type: Corporation

State or Country of Incorporation: California

GOODS AND/OR SERVICES

International Class: 044

International Class 044: Providing cosmetic medical treatments namely laser hair removal, wrinkle correction therapies, removal of birthmarks, spider veins, tattoos, hand and facial skin rejuvenation, acne treatments all supervised by licensed medical staff

First Use Date: 2003-09-01

First Use in Commerce Date: 2004-01-16

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "LASER MED SPA"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-03-01 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent

Michelle Katz (Attorney of record)

MICHELLE KATZ

4205 KESTER AVE

SHERMAN OAKS, CA 91403-4134

Phone Number: (818) 783-9729

Fax Number: (818) 990-8281

SKIN DEEP

701 Fremont Ave.
South Pasadena, CA 91030

Sales Receipt

Date	Sale No.
2/18/2004	

Sold To
Christine Burgs

Check No.	Payment Method	Project
	Cash	

Description	Qty	Rate	Amount
Glycolic peel.		125.00	125.00
Sales payment		-125.00	-125.00
Thank you for your business.		Subtotal	\$0.00
		Sales Tax (8.25%)	\$0.00
		Total	\$0.00

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-07-01 16:55:07 ET

Serial Number: 76579565

Registration Number: (NOT AVAILABLE)

Mark

SKIN DEEP Laser MEDSPA

(words only): SKIN DEEP LASER MEDSPA

Standard Character claim: No

Current Status: Abandoned-Failure To Respond Or Late Response

Date of Status: 2005-06-30

Filing Date: 2004-03-04

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 110

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: M1X -TMO Law Office 110 - Examining Attorney Assigned

Date In Location: 2005-06-30

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Martello, Jeannette Y

Address:

Martello, Jeannette Y
701 Fremont Avenue
South Pasadena, CA 91030
United States

Legal Entity Type: Individual

Country of Citizenship: United States

Phone Number: (626) 403-1747

Petition to Cancel, Reg. 2932593
EXHIBIT 4

Fax Number: (626) 403-1784

GOODS AND/OR SERVICES

International Class: 044

medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services

First Use Date: 2004-02-18

First Use in Commerce Date: 2004-02-28

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-06-30 - Abandonment Notice Mailed - Failure To Respond

2005-06-30 - Abandonment - Failure To Respond Or Late Response

2005-02-28 - Amendment From Applicant Entered

2005-02-02 - Unresponsive paper received

2005-02-02 - PAPER RECEIVED

2004-10-04 - Non-final action e-mailed

2004-10-04 - Non-Final Action Written

2004-09-20 - Case file assigned to examining attorney

2004-03-19 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent

Brandon Tesser (Attorney of record)

Brandon Tesser

TESSER & RUTTENBERG

Petition to Cancel, Reg. 2932593
EXHIBIT 4

12100 Wilshire Boulevard, Suite 220.
LOS ANGELES CA 90025

Phone Number: 310.207.4022

Fax Number: 310.207.4033

Skin Deep Laser MEDSPA

701 Fremont Ave.
South Pasadena, CA 91030

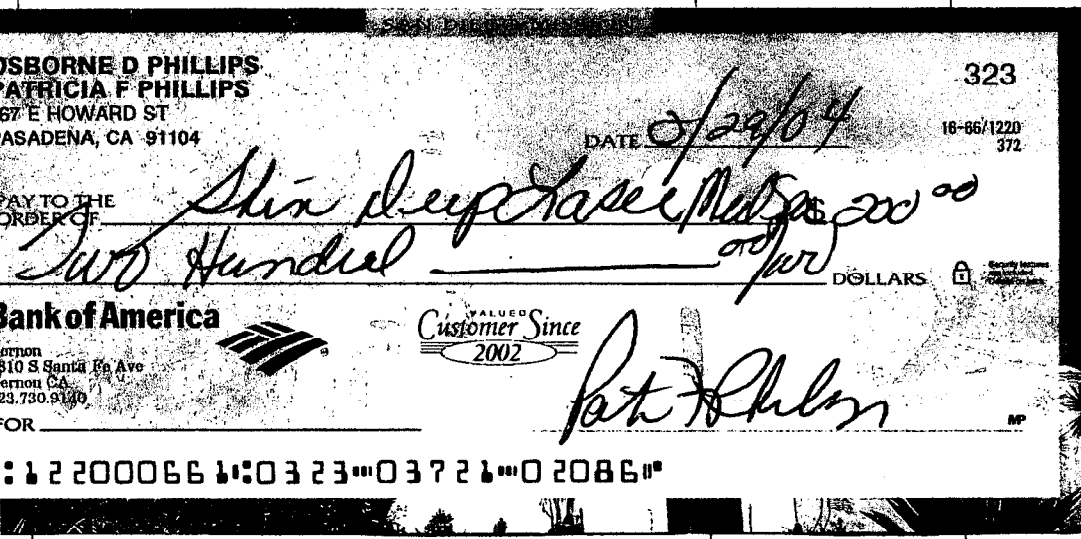
Sales Receipt

Date	Sale No.
2/29/2004	3

Sold To
Patricia Phillips

Check No.	Payment Method	Project
322	Check	

Description	Qty	Rate	Amount
Laser spider vein treatment of both cheeks		200.00	200.00
Payment		-200.00	-200.00
Thank you for your business.		Total	\$0.00



Skin Deep Laser MEDSPA

701 Fremont Ave.
South Pasadena, CA 91030

Sales Receipt

Date	Sale No.
2/28/2004	2

Sold To
Annette Palazuelos

Check No.	Payment Method	Project
	VISA	

Description	Qty	Rate	Amount
Laser hair removal of mustache.		100.00	100.00
Payment		-100.00	-100.00
Thank you for your business.		Total	\$0.00

Skin Deep Laser MEDSPA

701 Fremont Ave.

South Pasadena, CA 91030

Sales Receipt

Date	Sale No.
2/28/2004	1

Sold To
Linda Palazuelos

Check No.	Payment Method	Project
	ATM	

Description	Qty	Rate	Amount
Laser hair removal of bilateral armpits		150.00	150.00
Laser hair removal of mustache.		100.00	100.00
Payment		-250.00	-250.00
Thank you for your business.		Total	\$0.00

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-07-01 16:58:46 ET

Serial Number: 76581391

Registration Number: (NOT AVAILABLE)

Mark

"Skin Deep Laser"

(words only): "SKIN DEEP LASER"

Standard Character claim: No

Current Status: A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

Date of Status: 2004-09-30

Filing Date: 2004-03-15

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 114

Attorney Assigned:
HINES REGINA C Employee Location

Current Location: M5R -TMO Law Office 114 - Legal Instruments Examiner

Date In Location: 2005-03-01

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Martello, Jeannette

Address:

Martello, Jeannette
501 Floral Park Terrace
South Pasadena, CA 91030
United States

Legal Entity Type: Individual

Petition to Cancel, Reg. 2932593
EXHIBIT 8

Country of Citizenship: United States

Phone Number: (626) 403-1747

Fax Number: (626) 403-1784

GOODS AND/OR SERVICES

International Class: 044

medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services

First Use Date: 2004-02-18

First Use in Commerce Date: 2004-02-28

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-03-01 - Amendment From Applicant Entered

2005-02-02 - Unresponsive paper received

2005-02-02 - PAPER RECEIVED

2004-09-30 - Non-final action e-mailed

2004-09-30 - Non-Final Action Written

2004-09-26 - Case file assigned to examining attorney

2004-03-31 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent

BRANDON TESSER, (Attorney of record)

BRANDON TESSER,
TESSER & RUTTENBERG
12100 WILSHIRE BOULEVARD
SUITE 220

Petition to Cancel, Reg. 2932593
EXHIBIT 8

LOS ANGELES, CA 90025

Phone Number: (626) 403-1747

Fax Number: (626) 403-1784

Petition to Cancel, Reg. 2932593
EXHIBIT 8

Skin Deep Laser

701 Fremont Ave.
South Pasadena, CA 91030

Sales Receipt

Date	Sale No.
2/28/2004	1

Sold To
Christine Burgs

Check No.	Payment Method	Project
	Cash	

Description	Qty	Rate	Amount
Laser hair removal.		150.00	150.00
Payment		-150.00	-150.00
Thank you for your business.		Total	\$0.00